THE HONOURABLE SRI JUSTICE

B.SESHASAYANA REDDY

WRIT PETITON Nos.12481, 12662, 13065,

14235 and 11782 of 2005

COMMON ORDER:

DISPOSED OF ON 06-04-2006.

W.P.NO.11782 of 2005

DR.GOLLA KUMARSWAMY .. PETITIONER

AND

THE STATE OF A.P., REP. BY ITS

PRINCIPAL SECRETARY, HEALTH, MEDICAL,

AND FAMILY WELFARE DEPARTMENT,

SECRETARIAT, HYD.

AND OTHERS .. RESPONDENTS

W.P.NO.12481 OF 2005

DR.JENNA PREM KUMAR .. PETITIONER

AND

THE STATE OF A.P., REP. BY ITS

PRINCIPAL SECRETARY, HEALTH, MEDICAL,

AND FAMILY WELFARE DEPARTMENT,

SECRETARIAT, HYD.

AND OTHERS .. RESPONDENTS

W.P.NO.12662 of 2005

Dr.R.KRISHNA KUMAR AND OTHERS .. PETITIONERS

AND

N.T.R. UNIVERSITY OF HEALTH SCIENCES,

VIJAYAWADA AND OTHERS .. RESPONDENTS

W.P.NO.14235 of 2005

DR.BHASKAR RAO .. PETITIONER

AND

THE STATE OF A.P., REP. BY ITS

PRINCIPAL SECRETARY, HEALTH, MEDICAL,

AND FAMILY WELFARE DEPARTMENT,

SECRETARIAT, HYD.

AND OTHERS .. RESPONDENTS

W.P.NO.13065 OF 2005

DR.V.MADHURI DIMPLE .. PETITIONER

AND

N.T.R. UNIVESITY FO HEALTH

SCIENCES, A.P. AT VIJAYWADA

REP. BY ITS REGISTRAR` .. RESPONDENT

THE HONOURABLE SRI JUSTICE

B.SESHASAYANA REDDY

WRIT PETITON Nos.12481, 12662, 13065,

14235 and 11782 of 2005

COMMON ORDER:

1. The issues involved in these writ petitions are identical and therefore, they are heard together and are being disposed of by this common order.

2. The Government framed the rules for admission to the Post Graduate Medical Courses of Ayurveda, Unani and Homoeopathy in the State of Andhra Pradesh, in exercise of powers conferred by sub- Section 1 of Section 15 read with Section 3 of the A.P. Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983.

3. The rules are called “Rules for admission into M.D. Courses of Ayurveda, Unani and Homeopathy in the colleges of Indian Systems of Medicine & Homeopathy in the State of Andhra Pradesh”, hereinafter referred to as ‘Rules’.

4. The NTR University of Health Sciences of Andhra Pradesh, Vijayawada issued admission notification on 18.4.2005 for admission to MD (Ayurveda), MD (Unani), MD (Homoeo), M.Sc., (Nursing) and M.Sc., (Medical) Courses for the year 2005-

2006. The said notification came to be published on 18-4-2005. The entrance test was conducted on 15-5-2005 and results were declared on 27-5-2005. The counseling was scheduled on 6-6-2005. For some reason or other there were no admissions in MD (Ayurveda) course for the academic year 2003-04. The Commissioner, Department of AYUSH received number of representations from the students requesting for making admissions for 2003-2004 academic years also. Thereupon, the Commissioner requested the Government to issue orders permitting the Registrar, NTR University of Health Sciences to conduct entrance test for MD (Ayurveda) for the academic year 2003-04 immediately as was done in case of MD (Unani) and MD (Homoeo). The Government permitted the Registrar of NTR University of Health Sciences to conduct the Entrance Test for MD (Ayurveda) for the academic year 2003-04 immediately. The Registrar, NTR University of Health Sciences, while informing the Government that admission process for the academic year 2005-06 had been commenced, proposed to treat the admissions for MD (Ayurveda) courses conducted for 2004-05 as 2003-04 and make admissions for 2004-05 as well as 2005-06 from the rankers of MD (Ayurveda) Entrance Test 2005-06 scheduled to be held on 15-5-2005. The Government considered the proposal of the Registrar of NTR Health Sciences, Vijayawada and decided to treat the admissions for MD (Ayurveda) courses conducted for 2004-05 as 2003-04 and to make admissions for 2004-05 as well as 2005-06 year from the rankers of MD (Ayurveda) Entrance Test 2005-06 scheduled to be held on 15-5-2005. Accordingly, G.O.Ms.No.515, dated 11-5-2005 came to be issued. The University informed the candidates to exercise their option of branch in MD (Ayurveda) for both the academic years 2004-05 and 2005-06. Accordingly, notice was displayed on the notice board and due announcement was made through public address system before securing option forms from the candidates. Notice published on the notice board on the date of counseling reads as under:-

“NOTICE

MD (AYURVEDA) CONSELLING

The Government in G.O.Ms.No.515, HM & FW (E2) Department, Dt.11-5-2055 directed to treat the admissions for MD (Ayurveda) for 2004-05 as 2003-04 and to make admissions for 2004-05 as well as 2005-06 year from the rankers of MD (Ayurveda) Entrance Test 2005-06 held on 15-5-2005.

In view of the above decision, the University has decided to adopt the following procedure for selection of students from among the merit list of 2005-06 as follows:-

For admission into 2004-05 academic year, the candidates who had completed the internship on or before 31-10-2004 will be eligible and so also service candidates who completed a minimum of 3 years regular service as on 31-10-2004. The students belonging to this batch if not selected based on any one of their options for 2004-05, will also be considered for the 2005-06 batch.

The candidates who have completed/will complete internship on or before 30-6-2005 and the service candidates who complete a minimum of 3 years regular service on or before
30-6-2005 will be eligible for admissions into the year 2005-06.

Accordingly, students are advised to give their options to the selection committee."

The option form furnished to the candidates reads as under:-

"**NTR UNIVERSITY OF HEALTH SCIENCES: VIJAYAWADA-520 008**

SELECTIONS FOR MD (AYURVEDA) AND 2005-2006

Name: Hall Ticket No. :

Rank No. :

Social Status : University Area:

S E R V I C E : YES/NO Other State :

(Tick the appropriate Box)

Date of Joining in BAMS course on :

Date of Completion of Internship/

3 years regular service :

SUBJECT OPTiON

NOTE: CANDIDATES WHO HAVE PASSED THE SUBJECT CONCERNED AT THE DEGREE (BAMS) LEVEL IN FIRST ATTEMPT SHALL BE ELIGIBLE FOR ADMISSION INTO THAT SUBJECT. THIS WILL APPLY TO THE CANDIDATES WHO HAVE JOINED BAMS COURSE AFTER 15-7-1995.

1.

2.

3.

4.

Signature of the Candidate

NAME

(FOR OFFICE USE ONLY)

CHAIRMAN

Course & College allotted MD (AYURVEDA) SELECTION COMMITTEE

2004-05 AND 2005-2006

The University conducted closed counseling basing on the option exercised by the candidates and notified the provisional selection list college wise for the years 2004-

05 and 2005-06.

5. Dr. Bhaskara Rao. D.V.K was provisionally given admission in Dravyaguna course of MD (Ayurveda). Subsequently allotment of seat came to be cancelled on the ground that he is ineligible to secure seat in Dravyaguna, since he did not pass the subject concerned at decree level in first attempt. In some of the writ petitions G.O.Ms.No.515, dated 11-5-2005 treating the admissions for MD (Ayurveda) course conducted for 2004-05 as 2003-04 and making admissions for 2004-05 as well as 2005-06 from the rankers of MD (Ayurveda) Entrance Test 2005-06 held on 15-5-2005 is under challenge. In some of the writ petitions, the grievance of the petitioners is that option of their choice was not given and instead less meritorious persons were accommodated in the branch of their choice. For brevity, I deem it appropriate to refer the prayers sought for in each of the writ petitions.

6. In W.P.No.11782 of 2005 filed by Dr. Golla Kumarswamy, the relief sought for is:-

> "For the reasons stated in the accompanying affidavit it is prayed that this Hon'ble High Court may be pleased to issue a writ or order or a direction more particularly in the nature of Writ of Mandamus declaring the action of the Respondents including the MD (Ayurveda) Seats for the year 2003-04 without notice or any Notification giving an opportunity to all including the Petitioner and set aside the Notification Endt No.886/EA2/2005, dt.18-04-2005 as illegal, arbitrary, contrary to law and violative of Article 14 and 21 of the Constitution of India, and consequently directing the respondents to conduct Entrance Test for the MD (Ayurveda) Seats for the year 2005-06 which enable me to appear for Entrance Test and competitive with others, in the interest of justice and pass such other order or orders as this Hon'ble High Court deems fit and property in the circumstances of the case."

7. Initially the writ is filed against the State Government and the NTR University of Health Sciences. Subsequently, Dr.B. Kishan came on record as respondent 3 as per the orders in W.P.MP.No.17357 of 2005, and Dr. K. Srinivas, Dr.K. Sudheer, Dr. B.Ravi Kumar and Dr.P.S.R.Siva Kalayan came on record as respondents 4 to 7 as per the orders in W.P.M.P.No.17544 of 2005 and B.Srinivasulu came on record as R-8 as per orders in W.P.M.P.No.21914 of 2005. At this juncture itself it is pertinent

to note that the petitioner is not an applicant seeking admission for any of the Courses in pursuance of the notification dated 18-4-2005. His contention is that had there been a fresh notification for the year 2003-04, he would have been the applicant as he is eligible to apply for entrance test. For better understanding of the grievance of the petitioner in W.P.No.11782 of 2005, I deem it appropriate to refer Paragraph No.6 of the writ affidavit and it is thus:-

> "I submit that I have no opportunity to participate the Entrance Test, since as per the Notification dt.18-4-2005 and its prospectus only 31 seats of MD (Ayurveda) is made available for Admission and they did not disclose either by notification nor modifying the Notification at any point of time and hence the act of the Respondents is in clear violation of Art 14 and 21 of the Constitution of India as held by the Apex Court in India. I submit that I am moving this as urgent House Motion in view of urgency and also in view of conducting Counseling on 06-06-2005, which may be allowed in the interest of justice."

8. The writ petitioner also moved W.P.M.P.No.15017 of 2005 seeking interim relief pending the writ. An interim order came to be passed on 21-6-2005 indicating that the admissions shall be subject to the outcome of the writ petition.

9. In WP.No.14235 of 2005 filed by Dr. Dr.Bhaskar Rao, the relief sought for is:-

"For the reasons stated in the accompanying affidavit it is prayed that this Hon'ble Court may be pleased to issue a writ or order or a direction more particularly in the nature of Writ of Mandamus

v. declaring the action of the Respondents for not allowing the petitioner to prosecute his studies for MD (Ayurveda) as per provisional Section intimation letter of Respondent No.2 dt. 06-06-2005;

vi. also declare the clause 3.6 of the Prospects denying right of admission into any course restricting MD (Ayurveda)seat against one attempt of passing the relevant Subject as a precondition; and

vii. declare that the 4th respondent is not eligible for the academic year 2005-06 in any subject; and set aside the telegram

dated 25-6-05

as illegal, arbitrary, contrary to law, contrary to the Indian Medicine Central Counsel act, 1970, violative of Art 14, 21 of the Constitution of India, contrary to the Presidential Rules, contrary to rule of Reservation; and

viii. consequently allowing the petitioner to prosecute his studies in any Subject/Branch in MD (Ayurveda) as per his rank and selection forthwith for the year 2004-05 and 2005-06;

in the interest of justice and pass such other order or orders as this Hon'ble Court deems fit and proper in the circumstances of the case.

10. Though the writ petitioner assails allotment of seats to Smt.Purnima, Ms.Gayatri, Mr.Nageswara Rao, Miss.Josna, Mr.Nagaraju, Mr.Krishna Boddula and P.Vijaya Lakshmi, he did not chose to make them as party respondents.

11. Much emphasis has been laid by the learned counsel for the petitioner during the course of arguments about allotment of seats to Smt.Purnima, Mr.Krishna Boddula and P.Vijaya Lakshmi, knowing fully well that the petitioner has not chosen to implead them as party respondents in the writ petition.

12. Dr.Jenna Prema Kumar is the petitioner in W.P.No.12481 of 2005. The relief sought in the writ petition is as follows:-

"For the reasons stated in the accompanying affidavit it is prayed that this Hon'ble Court may be pleased to issue a writ or order or a direction more particularly in the nature of Writ of Mandamus declaring the action of the Respondents for not selecting the Petitioner for MD (Ayurveda), who got first in the State among the Scheduled Tribe and his eligibility and also declare the clause 3.6 of the Prospects denying right of admission into any Course in MD (Ayurveda) seat as well as denying a seat for ST candidates, as illegal, arbitrary, contrary to law, contrary to the Indian Medicine Central Counsel Act, 1970, violative of Art 14, 21 of the Constitution of India, contrary to the Presidential Rules, contrary to the rule of Reservations and consequently directing the respondents to allot one

MD (Ayurveda) Seat in any subject to the petitioner for the year 2004-05 and 2005-06 forthwith by taking his rank and community MD, in the interest of justice and pass such other order or orders as this Hon'ble High Court deems fit and proper in the circumstances of the case."

13. R.Navakanth came to be impleaded as 3rd respondent in the writ petition as per the orders in W.P.M.P.No.1432 of 2006, dated 25-1-2006.

14. Dr.V.Madhiri Dimple is the petitioner in W.P.No.13065 of 2005. The relief sought for in the writ petition is as follows: -

For the reasons stated in the accompanying affidavit, it is prayed that this Hon'ble Court may be pleased to issue a writ of Mandamus or any other appropriate writ direction declaring the action of the respondent in not reserving any seat for BC candidate in Osmania University area as illegal arbitrary and consequently direct the respondent to earmark one seat for BC (A) candidate and further direct the respondent to consider the case of the petitioner for admission to MD (Ayurveda course) for the academic year 2005-06 and pass such other or further orders as the Hon'ble Court feels deem fit and proper in the facts and circumstances of the case."

15. Dr. R. Krishna Kumar, Dr. P. Himabindu and Dr. B. Srinivasulu are the petitioners in W.P.No.12662 of 2005. The relief sought for in the writ petition is as follows: -

"For the reasons stated in the affidavit filed in support of the Writ Petition it is further prayed that this Hon'ble Court in the interests of justice Pleased to issue a writ, order or direction; more particularly, one in the nature of a Writ of Mandamus by:

a. Declaring the action of the 1st respondent University in denying admission to the writ petitioner in M.D (Ayurvedic) Kaya Chikista course for the academic session 2005-06 and simultaneously granting admission in favour of the unofficial respondents No.3 to 6 as unconstitutional;

b. Consequently, direct the 1st respondent to grant admission in favour of the writ petitioners herein in M.D. (Ayurvedic) Kaya Chikista course for the academic session 2005-06 forthwith and allow the writ petitioners to pursue the said post-graduate course

and pass such order or further orders as are deemed fir and proper in the circumstances of the case."

16. The grievance of the writ petitioners is that their options ought to have been considered for the academic year 2005-06 also and in which event they would be eligible to get seat in Kaya Chikitsa, which was their first option. A fact remains the petitioners gave their options and their options were considered for the academic year 2004-05 and seats were allotted in one of their option subjects as per their ranking. For better understanding of the grievance of the petitioners, I deem it appropriate to refer the Paragraph No.3 of the writ affidavit and it is thus:-

"I respectfully submit that the unofficial respondents, Dr. K. Srinivas, who is a BC-B candidate and who got a seat in an open category, secured 32nd rank while Dr. B. Arun Kumar secured 36th rank and Dr. D. Usha Madhuri belonging to Sri Venkateswara University local area got 24th rank. It is relevant to point out that the 2nd petitioner, Dr. P. Himabindu also is a local candidate of SV University local area. I humbly submit that the selection procedure has been spelt out in paragraph No.14 of the prospectus, which reads as under:-

"*The selection Committee shall have power to review the provisional selection in case of any error, misrepresentation, fraud or glaring injustice. In all matters relating to selections and admissions, the decision of the Selection Committee shall be questioned after admissions are closed."*

I respectfully submit that the counseling procedure adopted by the 1st respondent University is by way of exercising options in the Form submitted by the University. The students were required to exercise their preferences in all the 4 post-graduate courses available. I respectfully submit that the petitioners herein have opted for Kayachikista as the first preference followed by Salya, Salakya & Prasuti Tantra as the second option and Dravyaguna and Rasashastra as the 3rd and 4th options. The selections were finalized by the Committee by taking into account and consideration the options exercised by the candidates and by adoption the following procedure of reservations in favour of local candidates as well as reservation in favour of SC, ST and BCs. The selection list has been now made public on06.06.2005. The writ petitioners 1st petitioner granted admission in Salya, Salakya & Prasuti Tantra, 2nd petitioner granted in Dravyaguna, and 3rd petitioner granted admission in Rasashastra for the academic year 2004-05. I humbly submit that the admissions were

sought to be now made for 2 academic sessions viz., 2004-05 and 2005-06 as ordered by the State Government through their G.O.Rt.No.515, Health, Medical and Family Welfare Department, dated 11.05.2005. I humbly submit that the unofficial respondents have been granted admission in the post-graduate course of Kayachikista for the academic year 2005-06."

17(a). The respondent University field counter affidavit and additional counter affidavit in all the writ petitions resisting the claims of the petitioners. The sum and substance of the counter affidavit is that the Commissioner, Department of AYUSH, Secunderabad in his Letter No.26486/A.1,1/2004-1, dated 22-1-2005 has informed that number of representations have been received from the students and Parents Association requesting to make admissions for 2003-04 academic year also and therefore requested the Government to issue orders permitting the Registrar, N.T.R University of Health Sciences, Vijayawada to conduct entrance test for MD (Ayurveda) for the academic year 2003-04 immediately as was done in case of MD (Unani) and MD (Homoeopathy). As many as 302 application forms for MD (Ayurveda) courses for the years 2005-06 were sold at various sale counters from 20-4-2004 to 3-5-2005 and as many as 296 application forms were registered to appear the Entrance Test which was scheduled to be held on 15-5-2005. A majority of the candidates were aware of the fact that the Government had accorded permission to admit two batches of candidates from those qualified at a single entrance test. The entrance test for 2004-2005 was conducted on 19-12-2004 and the counseling was held on 30-12-2004. If the candidates were not aware of the above-mentioned fact, such a large number of candidates would not have applied within such a short gap of 4 months. For admission into 2004-05 academic year, the candidates who had completed the internship on or before 31-10-2004 are eligible and so also service candidates who have completed a minimum of 3 years regular service as on 31-10-2004. The candidates belonging to this batch, if not selected to any of the courses as per their option for 2004-05, will also be considered for the 2005-06 batch. The candidates who have completed internship on or before 30-6-2005 and the service candidates who have completed a minimum of 3 years regular service on or before 30-6-2005 are eligible for admissions into the year 2005-06. Accordingly, candidates are advised to give their options to the selection committee.

17(b). The above information was given to the candidates by way of a notice displayed on the notice board and public address system before commencement of the selection process. A copy of the said notice was sent to the Secretary to Government, HM & FW Department, Government of A.P., and Commissioner, Department of AYUSH, Secunderabad for purpose of information. The following seats were made available in MD (Ayurveda) courses for the academic year 2004-05:-

"1. Kaya Chikitsa -10

2. Salya, Salakya and

Prasuti Tantra- -10

3. Dravya Guna -6

4. Rasa Sastra -5

Similarly for the academic year 2005-06, the following seats were available.

1. Kaya chikista (KC) -10

2. Salya, Salakya and

Prasuti Tantra- -10

3. Dravya Guna -8

4. Rasa Sastra -5

*1 seat each in the Specialties of KC, SSP and DG are reserved for foreign nationals as per Government of India Lr.No.R.12013/1/2003-E&C(ii), dated 23-03-2004.

In Rasa Sastra 2 seats are reserved for candidates from outside the state in each academic year.

All three seats are statewide courses. The admissions into these course shall be as per the para 6 of the Andhra Pradesh Educational Institutions (Regulation of admissions) Order, 1974 (Presidential

Order)."

17(c). The petitioner in W.P.No.12481 of 2005 appeared for MD (Ayurveda) entrance Test for the years 2005-06 and secured Rank 166. He belongs to ST category of AU area. Petitioner completed his internship on 20-6-2005. Hence, he is eligible to seek admission to MD (Ayurveda) courses for the year 2005-06 only. Further, his 1st and 2nd options are Dravyaguna and Rasashastra. He is not eligible for admission to Shalya Shalakya and Prasuti Tantra and Kaya Chikistsa specialities as he failed to pass in the said subjects in the first attempt at degree level as per Regulation No.9.1 of the prospectus for admission to MD (Ayurveda) courses for the academic session 2005-06. No seats are reserved for ST in Dravyaguna and Rasashastra specialties for the year 2005-06. Further he could not get a seat in open competition as Rank Nos. 16, 25, 81 in Dravyaguna and Rank Nos. 13, 41 & 45 in Rasashastra have secured seats, who are more meritorious than the petitioner for the year 2005-06. The Selection Committee has strictly followed the procedure as mentioned in the prospectus. The allegation of the petitioner that 2nd respondent with a malafide intention has not strictly followed the procedure as mentioned at paras 3 to 4 of the prospectus is incorrect. The Selection Committee selected the candidates for four specialties i.e., Kayachikistsa, Salya Salakya & Prasuti Tantra, Dravyaguna and Rasashastra considering their rank, social status, University area and option. As per the decision taken, the candidates who had completed internship on or before 31-10-2004 are eligible for admission into 2004-05. Out of 4 qualified ST candidates with Rank No.166 (AU), 205 (OU) and 219 (OU) attended the counseling and where as candidate securing Rank No.207 Service (OU) remained absent. Candidate with rank No.166 eligible for 2005-06 has failed in Kaya Chikista, Shalya Shalakya and Prasuti Tantra and thereby became ineligible to seek admission in the said specialties for 2005-06 and as no seats are reserved for STs in Dravya Guna and Rasashastra, question of considering his candidature under S.T. category for the said specialties also does not arise. So a candidate with Rank No.205 has been allotted to Shalya Shalakya and Prasuti Tantra as per his first option. As a candidate with Rank No.219/ST is eligible for 2005-06 only, the unfilled seat of Kaya Chikitsa for 2004-05 is converted to SC. The converted ST to SC seat in Kaya Chikitsa is allotted to a candidate with rank No.208 from AU area. Since the CCIM is the Central Regulatory Agency, the University is bound to follow the

provisions/regulations of CCIM. The rules issued in G.O.Ms.No.341 were superseded by rules issued in G.O.Ms.No.603. As per rule 9 (i) of the Rules, under the eligibility criteria, the candidates who have joined BAMS course after 15-7-1995 shall pass the subject concerned at degree level in first attempt.

18. Heard Mr. M.V. Raja Ram, learned counsel appearing for the petitioners in W.P.No.11782 of 2005, W.P.No.14235 of 2005 and W.P.No.12481 of 2005. Mr.Nooty Rammohan Rao, learned counsel appearing for the petitioners in W.P.No.12662 of 2005, Mr.O.Manohar Reddy, the learned Counsel papering for the petitioners in W.P.No.13065 of 2005, Mr.D.V.Nagarjuna Babu, learned Standing Counsel appearing for the University, learned Government Pleader for Health, Medical and Family Welfare Department appearing for the official respondents and Mr.M.S.Ramachandra Rao, learned counsel appearing for the unofficial respondents.

19. Every State action must be reasonable and in public interest and infraction of that duty is amenable to judicial review. The extent of permissible judicial review was indicated by saying that the actions are amenable to judicial review only the extent that the State must act validly or a discernible reason, not whimsically for any ulterior purpose. There is a presumption of validity of State action and the burden is on the person who alleges violation of Art.14 to prove the assertion. However, where no plausible reason or principle is indicated nor is it discernible and the impugned State action, therefore, appears to be ex facie arbitrary. The initial burden to prove the arbitrariness is discharged shifting onus on the State to justify its action as fair and reasonable. If the State is unable to produce material to justify its action as fair and reasonable, the burden on the person alleging arbitrariness must be held to be discharged. The scope of judicial review is limited as indicated in DWARKADAS MARFATIA AND SONS VS. BOARD OF TRUSTEES OF THE PORT OF BOMBAY case to oversee the State action for the purpose of satisfying that it is not vitiated by the vice of arbitrariness and no more. The wisdom of the policy or the lack of it or the desirability of a better alternative is not within the permissible scope of judicial review in such cases. It is not for the courts to recast the policy or to substitute it with another which is considered to be more appropriate, once the attack on the ground of arbitrariness is successfully repelled by showing that the act which was done, was fair and reasonable in the facts and circumstances

of the case. It is well settled that every State action, in order to survive, must not be susceptible to the vice of arbitrariness which is the crux of Art.14 of the Constitution and basic to the rule of law, the system which governs us. Arbitrariness is the very negation of the rule of law. Satisfaction of this basic test in every State action is sine qua non to its validity. The question whether the impugned act is arbitrary or not, is ultimately to be answered on the facts and circumstances of a given case. An obvious test to apply is to see whether there is any discernible principle emerging from the impugned act and if so does it satisfy the test of reasonableness. Every State action must be informed by reason and it follows that an act uninformed by reason is arbitrary. Rule of Law contemplates governance by laws and not by humour, whimsical or capricious of the men to whom the governance is entrusted for the time being. It is trite that 'be you ever so high, the laws are above you'. This is what men in power must remember always. It has been emphasized time and again that arbitrariness is anathema the State action in every sphere and wherever the vice percolates, this Court would not be impeded by technicalities to trace it and strike it down. This is the surest way to ensure the majesty of rule of law guaranteed by the Constitution of India. Conferment of the power together with the discretion which goes with it to enable the process of exercise of power is coupled with the duty to shun arbitrariness in its exercise and promote the object for which the power is confirmed which undoubtedly is public interest and not individual or private gain, whim or caprice of any individual. All persons entrusted with any such power have to bear in mind its necessary concomitant, which alone justifies conferment of power under the rule of law.

20. The Supreme Court in D.N.CHANCHALA v. STATE OF MYSORE held that distribution of seats University-wise is not violative of Article 14 of the Constitution. In case of MOHAN BIR SINGH CHAWLA v. PUNJAB UNIVERSITY, the Supreme Court held that college wise preference is not permissible but University-wise preference is permissible provided it is relevant and reasonable. The broad tests guiding the exercise of court's jurisdiction in such academic matters are indicated in the pronouncement of Supreme Court in KANPUR UNIVERSITY v. SAMIR GUPTA.

21. The principal contention of Mr. M.V. Rajaram is that the decision of the

Government to treat the admission for MD (Ayurveda) courses conducted for 2005-06 as 2003-04 and to make admissions for 2004-05 as well as 2005-06 from the rankers of MD (Ayurveda) Entrance Test for the year 2005-06 is not in accordance with the rules for admission into MD Courses of Ayurveda, Unani and Homeopathy in the colleges of Indian Systems of Medicine & Homeopathy in the State of Andhra Pradesh. By referring Rule 8 of the Rules, the learned counsel submits that unless a notification inviting applications from the eligible candidates to appear entrance test for the relevant academic year, filling up the seats relatable to the said academic year from the rank holders of the entrance test held for filling up the seats for the year 2005-06 is impermissible. In a way he contends that unless there is a notification for entrance test for a particular year, seats relatable to that year cannot be filled up. At the first blush, his contention appears to be sound, but on close scrutiny of the circumstances under which the Government took decision to make admissions for 2004-05 as well as 2005-06 from the rankers of MD (Ayurveda) entrance test 2005-06, I do not detained myself long to reject the said contention. The circumstances which led to the Government to take decision is evident from the correspondence between the Commissioner, the University and the Government as well as the representations of the students. Had the Government has not taken decision to treat the admissions of the candidates made for the academic year 2004-05 as admissions for 2003-04, all the seats meant for 2003-04 would go waste. In a way, the seats available for the candidates who appeared for the entrance test in pursuance of the notification dated 18-4-2005 increased by twofold and thereby, expanding the scope of the rank holders of 2005-06 to get admission for the year 2004-05 and 2005-06. Therefore, I am unable to accept the contention of the learned counsel Mr. M.V. Raja Ram. In the circumstances of the case, the decision taken by the Government cannot be found fault and more so, in view of the fact that the decision enured to the benefit of more number of candidates because of increase of the seats.

22. The learned counsel Mr.M.V Raja Ram appearing for the petitioners has placed reliance on the decisions in MD.ABDUL AZEEZ ASAD *V.* STATE OF A.P. AND OTHERS, DR. S. SUSHMA KUMARI *V.* STATE OF ANDRHA PRADESH AND OTHERS, THE COMPTROLLER AND AUDITOR GENERAL OF INDIA, GAIN

PRAKASH, NEW DELHI AND ANOTHER *V .* K.S. JAGANNATHAN AND ANOTHER and RITESH R. SAH *V.* DR. Y.L. YAMUL AND OTHERS in support of his contentions.

In Ritesh's case (8th cited), the Supreme Court held that a student who is entitled to be admitted on the basis of merit though belonging to a reserved category cannot be considered to be admitted against seats reserved category. But at the same time the provisions should be so made that it will not work out to the disadvantage of such candidate and he may not be placed at a more disadvantageous position than the other less meritorious reserved category candidates.

Sliding rule enunciated by the Supreme Court in Ritesh's case has been followed by this Court in DR. S. SUSHMA KUMARI[6]. IN K.S. JAGANNATHAN AND ANOTHER (7th cited) decision, the Supreme Court held that the High Courts exercising their jurisdiction under Art.226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the Government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statue or a rule or a policy decision of the Government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case, a High Court can, in the exercise of its jurisdiction under Art.226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the Government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the Court may itself pass an order or give directions which the Government or the public authority should have passed or given had it properly and lawfully exercised its discretion.

In MD.ABDUL AZEEZ ASAD'S case (5th cited) the issue that fell for consideration before the full bench of this Court was Seat Matrix fixed by the Health University in various specialties of Post Graduate Medical studies. Coming to the facts of the case on hand, neither sliding principle nor the seat matrix in specialties

of MD (Ayurvedic) is an issue and therefore, the sited decisions are of no help to the petitioners.

23. With regard to the petitioner in W.P.No.11782 of 2005, he is not even the applicant for entrance test, he kept quite till the completion of the counseling and chose to question the entire process of counseling thereafter. His cause suffers on delay and laches and the writ petition is liable to be dismissed on that ground alone. It is not desirable to disturb the counseling in pursuance of which admissions have been given and classes have been commenced and more so at the instance of a candidate who is not the applicant for the entrance test.

24. Mr.D.V.Narajuna Babu, learned Standing Counsel appearing for the University submits that the candidates were well aware that the counseling is for the batches i.e. 2004-05 and 2005-06 and exercised their options accordingly and therefore they cannot be permitted to contend that there was no proper notification as to the procedure of selection of candidates for both the academic years. He would further contend that the petitioners made a false statement to that effect in the writ affidavit and thus their writ petitions are liable to be dismissed on that score. In support of his submissions, reliance has been placed on the decision of the Supreme Court in VIJAYA SYAL AND ANOTHER *V.* STATE OF PUNJAB AND OTHERS wherein it has been held that in order to sustain and maintain the sanctity and solemnity of the proceedings in law courts it is necessary that parties should not make false or knowingly, inaccurate statements or misapprehension and/or should not conceal material facts with a design to gain some advantage or benefit at the hand of the solemn pursuits. If any party attempts to pollute such a place by adopting recourse to make misapprehension and is concealing material facts it does so at its risk and cost. Such party must be ready to take the consequences that follow on account of its own making. At times lenient or liberal or generous treatment by courts in dealing with such matters is either mistaken or lightly taken instead of learning a proper lesson. Hence there is a compelling need to take a serious view in such maters to ensure expected purity and grace in the administration of justice.

25. Mr.M.Ramachander Rao, learned counsel appearing for the respondents submits that the petitioners in W.P.No.1423 of 2005 is ineligible to secure seat in Dravyaguna, since he did not pass the said subject in graduation in one sitting. Therefore, the University is justified in informing the petitioner of his non-inclusion in the selection list. A further submission has been made that classes have already been commenced and selected candidates have been pursuing the course since July, 2005 and at this distance of time any interference with regard to the selection list would cause great hardship to the selected candidates.

26. The contention of Mr.M.V.Rajaram, learned counsel appearing for the petitioners that Rule 9 of the Rules with regard to passing of the subject concerned at the degree level in first attempt is opposed to the rules framed by the Indian Medical Council has no substance. It is explicit from the Regulations called Indian Medicine Central Council Post Graduate Education Amendment Regulations, 1994 that only those who have passed all the examinations at the degree level in the first attempt shall be eligible for admission. Indeed a letter has been addressed by the Secretary, Central Council Indian Medicine to the Principal of Dr.B.R.K.R. Government Ayurvedic College, Hyderabad, indicating eligibility criteria for admission to P.G. course in different specialties of Ayurveda, which reads as under:

> " With reference to your letter No.560/02/2001 dated 16.9.2003 on the subject mentioned above, I am to inform you that Central Council under concerned Regulations has prescribed the following admission qualification for Post-graduate course in Ayurveda:-
>
> 1. The degree in Ayurveda of a University/Statutory Body included in the Second Schedule to the Indian Medicine Central Council Act, 1970.
> 2. Only those who have passed all the examinations at degree level in first attempt shall be eligible for admission.
>
> However, Central Council has agreed to admission qualification for Post-Graduate course in Ayurveda as under:
>
> 1. The degree in Ayurveda of a University/Statutory Body included in the Second schedule to the Indian Medicine Central Council Act, 1970.
> 2. Only those who have passed the subject concern at degree level

in first attempt shall be eligible for admission."

In view of the above letter, the contention of the learned counsel for the petitioners that Rule 9(i) of the Rules is contrary to the Regulations made by Indian Medicine Central Council has no merit.

27. Mr.O.Manohar Reddy, learned counsel appearing for the petitioner in W.P.No.13065 of 2005 contends that non reservation of seat for BC-A candidates in Osmania University area for the academic year 2005-06 is not legal and proper and therefore reservations made to various categories for the academic year 2005-06 are required to be reviewed.

28. Per contra, learned Standing Counsel appearing for the University submits that one seat has been reserved for BC categories in each subject and therefore the grievance of the petitioners in W.P.No.13065 of 2005 has no substance.

29. A perusal of the Prospectus for Admission Into M.D. (Ayurveda) courses 2005-06 indicates that one seat in each of Kayachikitsa, Salya, Salakya and Prasuti Tantra is reserved for each of the categories of BCs. Therefore, the contention of the learned counsel for the petitioner has no substance.

30. Learned Standing Counsel appearing for the University submits that no seat in Dravyaguna and Rasashastra to ST candidate is reserved since 6 per cent of reservation permissible to ST candidates out of 7 seats in Dravyaguna and 5 seats in Rasashastra would be less than 0.5 and whereas in courses of Kayachikitsa, Salya, Salakya and Prasuti Tantra the percentage of eligibility comes to more than 0.5 and therefore one seat is reserved in Salya, Salakya and Prasuti Tantra and kayachikitsa courses. A further submission has been made that the petitioner in W.P.No.13065 of 2005 cannot have any grievance since the seat under BC-A category has been reserved for Andhra University area. A further submission has been made that as per the Presidential Order, the reservation is to be made by

course-wise and not University area wise.

31. Learned counsel appearing for the petitioner Mr.M.V.Rajaram submits that one seat ought to have been reserved in S.T. category for Dravyaguna and Rasashatra for the year 2004-05. This contention can be rejected since he is not qualified to be considered for admission into M.D. (Ayurveda) as he completed his internship on 20.6.2005. Therefore his eligibility is to be considered for admission to M.D. (Ayurveda) for the year 2005-06. So far as allotting seat to unofficial respondent – Navakanth is concerned, he secured admission in Dravyaguna for the academic year 2005-06. The petitioner in W.P.No.14235 of 2005 is ineligible to secure admission in Dravyaguna since he failed to pass the said subject in his graduation in the first attempt. Therefore the seat allotted to Navakanth cannot be assailed by the petitioner.

32. It is the contention of the petitioner in W.P.No.14235 of 2005 that one seat ought to have reserved for BC-D in Kayachikitsa course and in which case the said seat is required to be allotted to him. His contention can be negatived by referring the Prospectus for Admission to M.D. (Ayurveda) 2005-2006. The total seats available under Kayachikitsa course are 9. Out of 9, 5-OC, 2-BC, 1-SC, 1-ST. Of this BC-2, one seat is reserved for BC-B and the other seat is reserved for BC-A or BC-D. As seen from the provisional list appearing at page No.19, one candidate by name S.Nagaraju who belongs to BC-A, Andhra University area has been given seat. He secured 9th rank. Since he is more meritorious amongst the BC-A or BC-D, there is no illegality or irregularity in allotting the seat to him. Learned counsel appearing for the petitioner in W.P.No.14235 of 2005 assails the seat allotted to Ravi Kumar on the ground that the petitioner is more meritorious than him. Admittedly, Ravi Kumar is not a party to the writ petition and the petitioner for the reasons best known to him did not chose to implead him as party. Added to that Ravi Kumar belongs to SC category and the petitioner belongs to BC-D category and hence he cannot assail the seat allotted to Ravi Kumar in Kayachikitsa course. More over, as contended by the learned Standing Counsel appearing for the respondent-University, one seat reserved for ST is converted into SC and the same is allotted to Ravi Kumar.

33. Sri.N.Ram Mohan Rao, learned counsel appearing for the petitioners in W.P.No.12662 of 2005 submits that the petitioners secured 18th, 23rd and 26th ranks and whereas respondents 3, 4 and 5 secured rank Nos.32, 36 and 24 respectively and in which case the petitioners are entitled for allotment of seat in M.D. (Ayurveda) Kayachikitsa which is their first option. Whereas it is contended by Sri.D.V.Nagarjuna Babu, learned Standing Counsel appearing for the University that the petitioners exercised common option for the admission into M.D. (Ayurveda) course for the years 2004-05 and 2005-06 and as per the notification dated 6.6.2005, which has been extracted in the aforesaid paragraphs of the judgment, the candidates eligible to seek admission in 2004-05 year would be considered for 2005-06 batch in case of their not securing admission in any one of their options for 2004-05 batch.

34. The material placed on record clearly establishes that the candidates participated in the closed counseling knowing fully well that firstly their options would be considered for the year 2004-05 and in case of their not securing seat in any one of their option courses, they would be considered for 2005-06 batch. The petitioners having participated in the closed counseling and exercised their option cannot be permitted to contend that their claim should be considered for the year 2005-06 batch also irrespective of their securing admission in one of their option subjects. I have gone through the option forms given by the candidates who attended closed counseling. Their option form is common for 2004-05 and 2005-06 batches. It is not the case of the petitioners that they have given options for both the batches separately. As per the notification dated 6.6.2005 once the candidate secures admission in one of his option subjects for 2004-05, his claim will not be considered for 2005-06 batch. Such is the situation, the contention of learned counsel for the petitioners has no substance and the same is liable to be rejected.

35. In view of the above discussion, I find that these writ petitions are devoid of merit and the same are hereby dismissed. No orders as to costs.

Dated: 06-04-2006. (B.Seshasayana Reddy,J)

MRB/tnb

CC IN 10 days.

THE HONOURABLE SRI JUSTICE

B.SESHASAYANA REDDY

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

WRIT PETITON Nos.12481, 12662, 13065,

14235 and 11782 of 2005

COMMON ORDER:

-

Dt: 06-04-2006.